

REMARKS

Claims 1-18 are pending in this application for review and consideration.

ELECTION/RESTRICTIONS**Patentability Distinct Inventions**

On pages 2-4 of the Office Action, it alleges that there is more than one distinct invention, thus requiring a restriction of the present invention to one of the following inventions.

- I. Claims 1-11 and 16, drawn to a bag, a kit for the bag and a method of use, classified in class 8, subclass 159.
- II. Claims 14-18, drawn to placing fabric in a bag, classified in class unknown, subclass unknown.

In order to be fully responsive to the restriction requirement, and in a desire to expedite further prosecution of the present application, Applicants respectfully elect Group I, claims 1-11 and 16, drawn to a bag, a kit for the bag and a method of use, with traverse. Applicants also request that claims 12-13, not placed within any group, be examined along with Group I. Further, Applicants submit request that claims 17 and 18 be examined with Group I, as they depend upon claim 16, which is a member of Group I. Applicants expressly reserve the right to file continuation and/or divisional applications directed to the subject matter of the non-elected claimed inventions.

Applicants submit that any prior art search set up for Group I will encompass Group II, as all of the claims of the present invention fabric bags. Applicants submit that any prior art search set up for Group I should be coextensive with any search for Group II because the novel combination of elements cited in these groups. The Office Action alleges that the fabric is treated in Group I, and it is only placed in a bag in Group II. Applicants respectfully submit that all of the claims of the present invention are drawn to at least a fabric bag. Thus, Applicants respectfully submit that searching of claim Groups I-II would present no undue searching burden for the Examiner.

Analysis

Paramount to issuing a restriction requirement, the Manual of Patent Examining Procedure ("MPEP") describes the criteria for restriction as follows:

(A) The inventions must be independent or distinct as claimed; and

(B) There must be a serious burden on the examiner if restriction is required.

MPEP § 803 (8th ed. 2003) (citations omitted). Furthermore, the MPEP requires that "Examiners must provide reasons and/or examples to support conclusions, but need not cite documents to support the requirement in most cases." MPEP § 803 (8th ed. 2003). Indeed, an Examiner must clearly provide reasons and/or examples to support how the claims define inventions that are independent or distinct, and further to show how there is a serious burden on the Examiner. The present Office Action provides no reasoning or examples of how Groups I and II define inventions that are independent or distinct, and no reasoning or examples to show how there is a serious burden on the Examiner to perform a search. Rather, the Office Action simply states that the different invention have different effects inasmuch as the fabric is treated in Group I, and it is only placed in a bag in Group II. There is no discussion as to how the inventions are distinct. Since the Office Action provides no reasoning or examples as to how the inventions are allegedly distinct, this restriction requirement is improper.

Even if the claims in an application contain inventions that are independent or distinct, a proper restriction also requires that there be a serious burden on the Examiner. See MPEP § 803(B) (8th ed. 2003). As the MPEP explains:

For purposes of the initial requirement, a serious burden on the examiner may be *prima facie* shown if the examiner shows by appropriate explanation either separate classification, separate status in the art, or a different field of search as defined in MPEP § 808.02. That *prima facie* showing may be rebutted by appropriate showings or evidence by the applicant.

MPEP § 803 (8th ed. 2003). Here, the Office Action does not provide the appropriate reasoning to support a *prima facie* case that a serious burden exists. Indeed, there is no discussion whatsoever as to the extent of the burden on the Examiner to perform the search. Since a serious burden on the Examiner has not been *prima facie* shown, the present restriction requirement is improper.

Based on the above remarks, reconsideration and withdrawal of the restriction requirement is respectfully requested. If, upon reconsideration, this restriction requirement is made final, Applicants respectfully request the next Office Action contain Form

Paragraph 8.05 as suggested in MPEP § 821.01 (7th ed. 1998), to show that Applicants have traversed the requirement and have retained the right to petition from the requirement under 37 C.F.R. § 1.144.

CONCLUSION

In view of the foregoing remarks, reconsideration of the application, withdrawal of the restriction requirement, and allowance of all claims are respectfully requested.

Respectfully submitted,

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